

MAR 14 2006

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MORRISON | FOERSTER

755 PAGE MILL ROAD
PALO ALTO
CALIFORNIA 94304-1018

TELEPHONE: 650.813.5600
FACSIMILE: 650.494.0792

WWW.MOFO.COM

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To:

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| MS Amendment U.S. Patent and Trademark Office | 571-273-8300 | 571-272-0779 |

FROM: Debra J. Glaister
Senior Patent Agent

DATE: March 14, 2006

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| Number of pages with cover page: | 47 |
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Preparer of this slip has confirmed that facsimile number given is correct: 7230/PME2

Comments:

Official Filing

Examiner: D. Sullivan
Art Unit: 1636
U.S. Patent Application Serial No.: 09/802,518
Filing Date: March 9, 2001
Inventor: Gary VAN NEST
Title: METHODS OF AMELIORATING SYMPTOMS OF HERPES INFECTION
USING IMMUNOMODULATORY POLYNUCLEOTIDE SEQUENCES
Docket No.: 377882001100

Papers enclosed herewith:

1. Transmittal - 1 page
2. Fee Transmittal + duplicate copy for fee processing - 2 pages
3. Supplemental Information Disclosure Statement - 3 pages
4. Form PTO/SB/08a/b + copy - 2 pages
5. Four (4) references - 38 pages

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PTO/SB/21 (09-04)

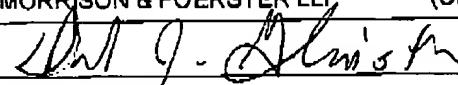
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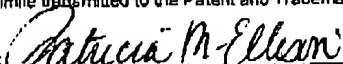
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| | | | |
|--|----------------------|------------------------|--------------|
| TRANSMITTAL FORM <small>(to be used for all correspondence after initial filing)</small> | Application Number | 09/802,518 | |
| | Filing Date | March 9, 2001 | |
| | First Named Inventor | Gary VAN NEST | |
| | Art Unit | 1636 | |
| | Examiner Name | D. Sullivan | |
| Total Number of Pages in This Submission | 46 | Attorney Docket Number | 377882001100 |

| ENCLOSURES (Check all that apply) | | |
|--|--|--|
| <input checked="" type="checkbox"/> Fee Transmittal Form + duplicate copy for fee processing - 2 pages <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input checked="" type="checkbox"/> Information Disclosure Statement (Supplemental) - 3 pages <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53 | <input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD | <input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): Form PTO/SB/08a/b + copy - 2 pages Four (4) references - 36 pages Fax cover sheet |
| Remarks | | |

| SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT | | | |
|--|---|----------|--------|
| Firm Name | MORRISON & FOERSTER LLP (Customer No. 25226) | | |
| Signature |  | | |
| Printed name | Debra J. Glaister | | |
| Date | March 14, 2006 | Reg. No. | 33,888 |

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| I hereby certify that this correspondence is being facsimile transmitted to the Patent and Trademark Office, facsimile no. (571) 273-8300, on the date shown below. | |
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PTO/658/17 (12-04v2)

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| Effective on 12/08/2004. Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818). FEE TRANSMITTAL For FY 2005 | | Complete If Known | | |
| <input checked="" type="checkbox"/> Applicant claims small entity status. See 37 CFR 1.27 | | Application Number | 09/802,518 | |
| | | Filing Date | March 9, 2001 | |
| | | First Named Inventor | Gary VAN NEST | |
| | | Examiner Name | D. Sullivan | |
| | | Art Unit | 1636 | |
| TOTAL AMOUNT OF PAYMENT (\$) | | 180.00 | Attorney Docket No. | 377882001100 |

METHOD OF PAYMENT (check all that apply)

☐ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): _____

☒ Deposit Account Deposit Account Number: 03-1952 Deposit Account Name: Morrison & Foerster LLP

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☒ Charge fee(s) indicated below ☐ Charge fee(s) indicated below, except for the filing fee
☒ Charge any additional fee(s) or underpayment of fee(s) under 37 CFR 1.16 and 1.17 ☒ Credit any overpayments

FEE CALCULATION

1. BASIC FILING, SEARCH, AND EXAMINATION FEES

| Application Type | FILING FEES | | SEARCH FEES | | EXAMINATION FEES | | Fees Paid (\$) |
|------------------|-------------|-----------------------|-------------|-----------------------|------------------|-----------------------|----------------|
| | Fee (\$) | Small Entity Fee (\$) | Fee (\$) | Small Entity Fee (\$) | Fee (\$) | Small Entity Fee (\$) | |
| Utility | 300 | 150 | 500 | 250 | 200 | 100 | |
| Design | 200 | 100 | 100 | 50 | 130 | 65 | |
| Plant | 200 | 100 | 300 | 150 | 160 | 80 | |
| Reissue | 300 | 150 | 500 | 250 | 600 | 300 | |
| Provisional | 200 | 100 | 0 | 0 | 0 | 0 | |

2. EXCESS CLAIM FEES

Fee Description

Each claim over 20 (including Reissues)

Each independent claim over 3 (including Reissues)

Multiple dependent claims

| Total Claims | Extra Claims | Fee (\$) | Fee Paid (\$) | Multiple Dependent Claims | |
|--------------|--------------|----------|---------------|---------------------------|---------------|
| 19 | - 35 = 0 | x 25 = | 0.00 | Fee (\$) | Fee Paid (\$) |
| | | | | 180 | 0.00 |

| Indep. Claims | Extra Claims | Fee (\$) | Fee Paid (\$) |
|---------------|--------------|----------|---------------|
| 3 | - 4 = 0 | x 100 = | 0.00 |

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

| Total Sheets | Extra Sheets | Number of each additional 50 or fraction thereof | Fee (\$) | Fee Paid (\$) |
|--------------|--------------|--|----------|---------------|
| - 100 = | /50 | (round up to a whole number) x | | |

4. OTHER FEE(S)

Non-English Specification, \$130 fee (no small entity discount)

Other (e.g., late filing surcharge): 1806 Submission of an Information Disclosure Statement 180.00

| | | | |
|-------------------|-------------------|-----------------------------------|----------------|
| SUBMITTED BY | | | |
| Signature | | Registration No. (Attorney/Agent) | 33,888 |
| Name (Print/Type) | Debra J. Glaister | Telephone | (650) 813-5725 |
| | | Date | March 14, 2006 |

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Dated: March 14, 2006

Signature:

Patricia M. Ellison

(Patricia M. Ellison)

Patent

Docket No. 377882001100

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Gary VAN NEST

Serial No.: 09/802,518

Filing Date: March 9, 2001

For: METHODS OF AMELIORATING
SYMPTOMS OF HERPES INFECTION
USING IMMUNOMODULATORY
POLYNUCLEOTIDE SEQUENCES

Examiner: D. Sullivan

Group Art Unit: 1636

SUPPLEMENTAL INFORMATION DISCLOSURE
STATEMENT UNDER 37 C.F.R. § 1.97 & 1.98

MS Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

Pursuant to 37 C.F.R. § 1.97 and § 1.98, Applicant submits for consideration in the above-identified application the documents listed on the attached Form PTO/SB/08a/b. Copies of the documents are also submitted herewith. The Examiner is requested to make these documents of record.

This Supplemental Information Disclosure Statement is submitted:

- ☐ With the application; accordingly, no fee or separate requirements are required.
- ☐ Before the mailing of a first Office Action after the filing of a Request for Continued Examination under § 1.114. However, if applicable, a certification under 37 C.F.R. § 1.97 (e)(1) has been provided.

03/15/2006 7L0111 00000063 031952 09802518

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Application Serial No. 09/802,518

Patent
Docket No. 377882001100

- ☐ Within three months of the application filing date or before mailing of a first Office Action on the merits; accordingly, no fee or separate requirements are required. However, if applicable, a certification under 37 C.F.R. § 1.97 (e)(1) has been provided.
- ☒ After receipt of a first Office Action on the merits but before mailing of a final Office Action or Notice of Allowance.
- ☐ A fee is required. A check in the amount of ___ is enclosed.
- ☒ A fee is required. Accordingly, a Fee Transmittal form (PTO/SB/17) is attached to this submission in duplicate.
- ☐ A Certification under 37 C.F.R. § 1.97(e) is provided above; accordingly, no fee is believed to be due.
- ☐ After mailing of a final Office Action or Notice of Allowance, but before payment of the issue fee.
- ☐ A Certification under 37 C.F.R. § 1.97(e) is provided above and a check in the amount of ___ is enclosed.
- ☐ A Certification under 37 C.F.R. § 1.97(e) is provided above and a Fee Transmittal form (PTO/SB/17 is attached to this submission in duplicate.)

Applicant would appreciate the Examiner initialing and returning the Form PTO/SB/08a/b, indicating that the information has been considered and made of record herein.

The information contained in this Supplemental Information Disclosure Statement under 37 C.F.R. § 1.97 and § 1.98 is not to be construed as a representation that: (i) a complete search has been made; (ii) additional information material to the examination of this application does not exist; (iii) the information, protocols, results and the like reported by third parties are accurate or enabling; or (iv) the above information constitutes prior art to the subject invention.

In the unlikely event that the transmittal form is separated from this document and the Patent and Trademark Office determines that an extension and/or other relief (such as payment of a fee under 37 C.F.R. § 1.17 (p)) is required, Applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petition and/or other


Application Serial No. 09/802,518

Patent
Docket No. 377882001100

fees due in connection with the filing of this document to Deposit Account No. 03-1952
referencing 377882001100.

Dated: March 14, 2006

Respectfully submitted,

By 

Debra J. Glaister

Registration No.: 33,888
MORRISON & FOERSTER LLP
755 Page Mill Road
Palo Alto, California 94304-1018
(650) 813-5725

ALTERNATIVE TO PTO/SB/06 a/b (07-05)

| | | | | | |
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| Substitute for form 1449/PTO INFORMATION DISCLOSURE STATEMENT BY APPLICANT (Use as many sheets as necessary) | | | Complete if Known | | |
| | | | Application Number | 09/802,518 | |
| | | | Filing Date | March 9, 2001 | |
| | | | First Named Inventor | Gary VAN NEST | |
| | | | Art Unit | 1636 | |
| | | | Examiner Name | D. Sullivan | |
| Sheet | 1 | of | 1 | Attorney Docket Number | 377882001100 |

| U.S. PATENT DOCUMENTS | | | | | |
|-----------------------|-----------------------|---|--------------------------------|--|---|
| Examiner Initials* | Cite No. ¹ | Document Number Number-Kind Code ² (if known) | Publication Date MM-DD-YYYY | Name of Patentee or Applicant of Cited Document | Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear |
| | | | | | |

| FOREIGN PATENT DOCUMENTS | | | | | | |
|--------------------------|-----------------------|--|-----------------------------------|--|---|----------------|
| Examiner Initials* | Cite No. ¹ | Foreign Patent Document Country Code ³ -Number ⁴ -Kind Code ⁵ (if known) | Publication Date MM-DD-YYYY | Name of Patentee or Applicant of Cited Document | Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear | T ⁶ |
| | | | | | | |

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| NON PATENT LITERATURE DOCUMENTS | | | | |
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| Examiner Initials* | Cite No. ¹ | Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published. | | T ² |
| | 1. | Fearon, K. et al. (2003). "A Minimal Human Immunostimulatory CpG Motif That Potently Induces IFN-Gamma and IFN-Alpha Production," <i>Eur. J. Immunol.</i> 33:2114-2212. | | |
| | 2. | Kobayashi, H. et al. (1999). "Immunostimulatory DNA Pre-priming: a Novel Approach for Prolonged Th1-Biased Immunity," <i>Cell Immun.</i> 198:69-75. | | |
| | 3. | Marshall, J.D. et al. (2003). "Novel Chimeric Immunomodulatory Compounds Containing Short CpG Oligodeoxynucleotides Have Differential Activities in Human Cells," <i>Nucleic Acids Research</i> 31(17):5122-5133. | | |
| | 4. | Marshall, J.D. et al. (2005). "Superior Activity of the Type C Class of ISS in Vitro and in Vivo Across Multiple Species," <i>DNA and Cell Bio.</i> 24(2):63-72. | | |

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¹Applicant's unique citation designation number (optional). ²Applicant is to place a check mark here if English language Translation is attached.

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|--------------------|--|-----------------|--|
| Examiner Signature | | Date Considered | |
| pa- 1051816 | | | |

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| Substitute for form 1449/PTO INFORMATION DISCLOSURE STATEMENT BY APPLICANT (Use as many sheets as necessary) | | | | Complete If Known | |
| | | | | Application Number | 09/802,518 |
| | | | | Filing Date | March 9, 2001 |
| | | | | First Named Inventor | Gary VAN NEST |
| | | | | Art Unit | 1636 |
| | | | | Examiner Name | D. Sullivan |
| Sheet | 1 | of | 1 | Attorney Docket Number | 377882001100 |

| U.S. PATENT DOCUMENTS | | | | | |
|-----------------------|--------------------------|--|--------------------------------|--|---|
| Examiner Initials* | Cite No. ¹ | Document Number | Publication Date MM-DD-YYYY | Name of Patentee or Applicant of Cited Document | Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear |
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| | 1. | Fearon, K. et al. (2003). "A Minimal Human Immunostimulatory CpG Motif That Potently Induces IFN-Gamma and IFN-Alpha Production," <i>Eur. J. Immunol.</i> 33:2114-2212. | | |
| | 2. | Kobayashi, H. et al. (1999). "Immunostimulatory DNA Pre-priming: a Novel Approach for Prolonged Th1-Biased Immunity," <i>Cell Immun.</i> 198:69-75. | | |
| | 3. | Marshall, J.D. et al. (2003). "Novel Chimeric Immunomodulatory Compounds Containing Short CpG Oligodeoxyribonucleotides Have Differential Activities in Human Cells," <i>Nucleic Acids Research</i> 31(17):5122-5133. | | |
| | 4. | Marshall, J.D. et al. (2005). "Superior Activity of the Type C Class of ISS in Vitro and in Vivo Across Multiple Species," <i>DNA and Cell Bio.</i> 24(2):63-72. | | |

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